CF0000057465

(2)

Cr.A 952 1989

Division Bench at Jaipur

APPEAL OF PRISONER

586.

No. 9895 Name रघुवीर उर्फ नन्दू

Father's name स्व० जाति - पेशा आकिन कचनपुर, थाना - सोनलत

Residence जिला - सरगुजा (म०प्र०) Age 40 साल

Sentenced आजीवन कारावास on 6.4.1989

Under section 302 भा०दं०वि० by न्यायालय - अपर सत्र न्यायाधीश, बैकुण्ठपुर जिला - सरगुजा (म०प्र०)

S.T.No. 187/89

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 6.4.1989

2 Date of which copy received 9.5.1989

3 Date on which Appeal sent 1.6.1989

4 whether the prisoner wishes to be represented or not – Yes / No.

No. 9895 Name रघुवीर उर्फ नन्दू आत्मज सुई

Continued in केन्द्रीय जेल Jail रायपुर (म०प्र०)

No. 479/अपराध/89 Dated 1.6.1989 198

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अति० पैंजीयक सर्वोच्च न्यायालय जबलपुर म०प्र०

to gather which a copy of order passed in the case for favour of transmission to the proper Appeliate Court.

Superintendent केन्द्रीय जेल रायपुर (म०प्र०) Jail

Date of receipt in C. J. M's office

Date of receipt record to accompany

Memo of Appeal of the Appeliate court

No Dated 198

Forwarded to the

C. J. Magistrate

Date of receipt in Appeliate Court

(P. T. O.)

AFR

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 952 OF 1989

Khulur alias Nandu

Vs.

State of Chhattisgarh

CORAM : HON'BLE SHRI FAKHRUDDIN, J &
HON'BLE SHIR DILIP DESHMUKH, J

Ku. Minu Banerjee, counsel for the appellant.
Shri Ashish Shukla, Govt. Advocate for the State.

J U D G M E N T

PER DILIP DESHMUKH,J

Heard on merits.

2. In this jail appeal, the appellant stands convicted under Section 302 of I.P.C. for committing murder of his wife Sundari Bai in the intervening night of 6th and 7th March 1988 by means of a Tangi in village Kanchanpur, P.S. Sonhat.

3. Briefly stated the prosecution story is that following a quarrel between the appellant and Sundari Bai in the intervening night of 6th and 7th March 1988, the appellant dealt a fatal blow on the neck of Sundari Bai by means of Tangi. Sundari Bai died instantaneously. The appellant fled away. Shivratan Singh P.W. 1 lodged the *Merg* intimation. Dead body of the deceased was recovered near a well under a Jambolan tree. Panchnama Ex. P-8 was prepared. The death of Sundari Bai having been under suspicious circumstances, the dead body was sent for post

mortem examination. Dr. Ashish Karan P.W. 8 who conducted the autopsy on 7-3-1988 found one ante mortem incised wound 3" x 3" x 2" bone deep present over left lateral aspect of neck of the level of 4th and 5th cervical vertebra. Wound was centered at its periphery. All muscles were cut. Fifth cervical vertebra was also cut and spinal cord was also completely transected. Carotid arteries were cut. The doctor opined that death was homicidal due to syncope out of haemorrhagic shock and neurogenic shock due to transaction of spinal cord. The accused appellant after committing gruesome murder of his wife fled away. It was found that the accused had made an extra judicial confession before Gorelal P.W. 13 regarding murder of his wife. Investigation progressed. At the memorandum of the accused dated 18-3-1988, handle of the Tangi which was blood stained was seized vide Ex. P-5 from Karri forest. Vide Ex. P-12, blood stained Blade of the Tangi was seized from the house of Nanhu Pando on 18-3-1988. Vide Ex. P-6, one blood stained Towel was seized on 19-3-1988. Upon being sent for chemical examination, vide Ex. P-18 presence of blood was confirmed on the blade of Tangi and Towel which were recovered at the instance of accused appellant. Upon completion of investigation, the accused appellant was put to trial. The accused appellant abjured his guilt. Prosecution examined P.W. 1 Shivratan Singh who had lodged the *Merg* intimation Ex. P-9 and also for Panchnama of dead body of Sundari Bai vide Ex. P-2. P.W. 2 Labango and P.W. 4 Dharmpal Singh were examined as witnesses who had last seen the appellant with the deceased in

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the intervening night of the occurrence. Dr. Ashish Karan P.W. 8 was examined to prove the autopsy and the nature of death of Sundari Bai. P.W. 1 Shivratan Singh and P.W. 10 Hriday Singh were examined as witnesses of memorandum of the accused Ex. P- 11 and recovery of the blood stained blade of the Tangi vide seizure Ex. P-12 made thereunder and investigating officer B.S. Kerketa P.W. 12 was examined by the prosecution to testify regarding the memorandum of accused appellant Ex. P-11 and recovery of the handle of Tangi Ex. P-5 and the blade thereof vide Ex. P-12 as also the recovery of blood stained Towel of the accused appellant vide Ex. P-6.

4. Learned trial Court recorded conviction of the appellant on the basis of the following circumstances:-

(i) that the appellant and the deceased were husband and wife and were last seen on the intervening night of occurrence;

(ii) that the appellant had made extra judicial confession before P.W. 13 Gorelal that he had killed his wife and at the instance of appellant, blade of the Tangi as well as the handle thereof were recovered and seized;

(iii) that there were blood stains on the handle and the blade of the Tangi and towel seized from the appellant vide Ex. P-6;

(iv) that the accused appellant did not inform about the death of his wife to police or anybody else and fled from the village for hiding.

5. Learned counsel for the appellant has assailed the impugned judgment on the ground that the extra judicial confession cannot

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be the sole basis for recording conviction of the accused appellant. She further contended that the chain of circumstantial evidence does not lead to the irresistible conclusion of the guilt of the appellant and, therefore, the appellant deserves to be acquitted.

6. On the other hand, learned Government Advocate supported the judgment and contended that the circumstantial evidence proved in the instant case brings home the guilt of the appellant and, therefore, there is no infirmity in the judgment of the trial Court.

7. We have gone through the evidence led by the prosecution in this case and have given our thoughtful consideration to the arguments advanced by the learned counsel for the rival parties.

8. The law relating to appreciation of circumstantial evidence has been laid down by the Apex Court in the case of Dhananjoy Chatterjee v. State of W.B. reported in (1994)2 SCC 220 as under:-

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused."

8. Similarly, in Gura Singh v. State of Rajasthan reported in (2001)2 SCC 205, the law relating to appreciation of evidence relating to extra-judicial confession has been laid down that extra-

judicial confession made by the accused-appellant, if voluntary, being not obtained by coercion, inducement or promise of favour can form the sole basis of conviction and corroboration would be required only by way of abundant caution.

8. In view of the law laid down by the Apex Court relating to circumstantial evidence, we shall now consider the evidence led by the prosecution regarding the links in the chain of circumstantial evidence. So far as the evidence regarding the appellant having been last seen with the deceased on the intervening night of occurrence is concerned, the testimony of P.W. 2 Labango and P.W. 4 Dharmpal Singh is wholly unrebutted and clearly establishes that they had seen the appellant with his wife in the intervening night of occurrence. Dharmpal Singh P.W.4 is the witness whose presence at the house of the appellant is natural since he had gone there for consuming tobacco and smoking *Bidi* and remained there for about half an hour. Nothing has been elicited in his cross-examination to rebut his testimony. Similarly P.W. 2 Labango knew the appellant and the deceased and remembered that in the intervening night of the occurrence at about 8.00 P.M., both the appellant and the deceased were passing in front of her house and had demanded some fire. Her testimony is also un-rebutted in cross-examination.

9. So far as the extra judicial confession made by the appellant before P.W. 13 Gorelal is concerned, we have very minutely gone through the testimony of P.W. 13 Gorelal. Gorelal has deposed in

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para 2 of his testimony that accused appellant had come to his house on Tuesday afternoon and said that some incident had taken place and upon being asked by him, narrated that there was a quarrel with his wife during which his wife had filthily abused him and when despite being resisted by him his wife persisted in hurling filthy abuses and also threw burning piece of wood on him, he got annoyed and killed his wife by means of a Tangi. In cross-examination, he has further narrated that the accused appellant had divulged that the entire incident had occurred at village Karri. On being asked, in para 5, he only said that he did not tell about the extra judicial confession made by the appellant to anybody in the village. Apart from this, there is absolutely no challenge at all to the testimony of Gorelal in cross-examination. Nothing has been elicited in the cross-examination to show that this witness bears any grudge against the appellant or has any axe to grind against the appellant. It was not even suggested by the defence in cross-examination that this witness did not convey the information given by the accused to him to any villager. Thus upon a careful examination of the testimony of Gorelal P.W. 13, we find that the testimony inspires confidence.

(0) So far as the nature of the injury sustained by the deceased is concerned, the testimony of Dr. Ashish Karan P.W. 8 establishes beyond doubt that Sundari Bai died a homicidal death. The recovery of handle of Tangi and the blade thereof at the instance of accused has also been brought home by the testimony of witnesses P.W. 1 Shivratan Singh and P.W. 10 Hriday Singh.

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These witnesses are independent witnesses. They don't bear any animosity against the accused appellant. Nothing has been elicited in their cross-examination to create any dent in their testimony. We have gone through the testimony of Shivratan Singh P.W. 1 and Hriday Singh P.W. 10 as well as the testimony of investigating officer P.W. 12 B.S.Kerketa and find that the prosecution has been able to establish the factum of recovery of the handle of Tangi as well as its handle at the instance of the appellant. It also establishes that the towel seized from the accused appellant had blood stains. As regards the delay in arresting the accused appellant after the occurrence, learned counsel for the appellant contended that the delay of 12 days in arresting the accused renders the investigation doubtful. We fail to appreciate this contention and it does not help the defence. It is not a case where the accused was available and could be arrested. The investigating officer in the instant case arrested the appellant after he was satisfied about the complicity of the accused after having collected credible evidence which goes to show that investigation was being conducted without any prejudice to the accused. On the contrary, the absence of the accused after the occurrence for a long duration and also the fact that he did not inform the police about the death of his wife confirms the complicity of the accused in the crime.

10. Learned counsel for the appellant contended that the extra judicial confession should not be relied upon. We have discussed

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hereinabove and found that the testimony of Gorelal P.W. 13 is reliable and it has rightly been relied upon along with other circumstances and the appellant has rightly been convicted.

11. Having thus considered, we are of the opinion that the following links in the chain of circumstantial evidence have been fully established against the accused appellant which lead only to the hypothesis of his guilt (i) that the accused appellant was last seen with his wife in the intervening night before the occurrence; (ii) that the accused appellant had made extra judicial confession before the P.W. 13 Gorelal regarding the offence; (iii) that the blood stains on the handle of the Tangi and Towel seized from the accused appellant were found; and (iv) that the accused appellant did not inform about the death of his wife to the police or anybody else. Thus there is no infirmity in the impugned judgment. The findings are well recorded.

12. The appeal fails and is accordingly dismissed.

Sd/-
Fakhruddin
Judge
16/6/2005

Sd/-
Dilip Raosaheb Deshmukh
Judge
16/6/2005

Pathak/-